



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**NOV 3 2008**

**Ms. Nancy Hylden, Esq.**  
**Faegre & Benson, LLP**  
**2200 Wells Fargo Center**  
**90 South Seventh Street**  
**Minneapolis, Minnesota 55402-3901**

**RE: MUR 6106**  
**Minnesota Corn Growers Association**  
**Minnesota Corn Growers Association PAC**  
**MN Corn PAC**

**Dear Ms. Hylden:**

By letter dated January 21, 2008, you notified the Federal Election Commission (the "Commission") of the possibility of violations by your clients, the Minnesota Corn Growers Association, Minnesota Corn Growers Association PAC and MN Corn PAC, of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On October 21, 2008, upon review of the information provided by your clients, the Commission found reason to believe that the Minnesota Corn Growers Association violated 2 U.S.C. § 441b(b)(4)(C) and (D); the Minnesota Corn Growers Association PAC and Michael McCarvel, in his official capacity as treasurer, violated 2 U.S.C. § 433(b)(2); and MN Corn PAC and Michael McCarvel, in his official capacity as treasurer, violated 2 U.S.C. §§ 433, 434, 441a(a)(1), 441b(a) and 11 C.F.R. § 102.5 (a)(2). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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If you are interested in engaging in pre-probable cause conciliation, please contact Kathryn Lefeber, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter.

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Similarly, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

Sincerely,



Donald F. McGahn II  
Chairman

Enclosures  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Minnesota Corn Growers Association MUR 6106  
Minnesota Corn Growers Association PAC and  
Michael McCarvel, in his official capacity as treasurer  
MN Corn PAC and Michael McCarvel, in his  
official capacity as treasurer

**I. GENERATION OF MATTER**

This matter was generated by information obtained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

**II. FACTUAL SUMMARY**

**A. MCGA PAC (MCGA's federal PAC)**

The Minnesota Corn Growers Association ("MCGA") is an incorporated nonprofit membership association of corn farmers. MCGA PAC, MCGA's separate segregated fund, was established on September 8, 2005 and registered with the Commission on November 22, 2005. MCGA PAC filed reports with the Commission in 2005 and in 2006, but consistently disclosed only \$550.00 total in unitemized contributions/cash on hand, with no other receipts, disbursements, debts or obligations, in each report during that time period.<sup>1</sup> The Commission notified MCGA PAC on January 25, 2007 that it would be administratively terminated on February 25, 2007 for inactivity, but that any receipt or disbursement of funds for federal elections would void the administrative termination.

<sup>1</sup> MCGA PAC's 2005 Year End Report, which covered September 8, 2005-December 31, 2005 showed \$550 in unitemized contributions, with no other receipts, disbursements debts or obligations. The 2006 April, July and October Quarterly Reports and the Post General Report all reported only \$550 cash on hand, with no other receipts, disbursements, debts or obligations. The 2006 April Quarterly and Post General Reports were filed with the Commission only after a Notice of Failure to File was sent to MCGA PAC.

Factual and Legal Analysis  
Minnesota Corn Growers Association;  
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**B. MN Corn (MCGA's state PAC)**

According to information obtained by the Commission, MN Corn, MCGA's state PAC, registered with the Minnesota Campaign Finance and Public Disclosure Board ("Minnesota Board") as a state PAC on January 14, 1999. It has never registered with the Commission. MN Corn's June 2000 articles of organization state that it was created to contribute to candidates for state office, but during 2000, MN Corn started contributing to federal, as well as state, candidates.<sup>2</sup> According to information obtained by the Commission, a representative of MN Corn called the Minnesota Board and was told "it was OK for a state PAC to give to federal candidates. So after that, MN Corn continued to do so, thinking it was proper procedure." Although MCGA created a federal PAC in 2005 that was registered with the Commission, it did not use it because "the state PAC was working and that's where all the money was." MN Corn reported all its receipts and expenditures to the Minnesota Board from 1999 through 2007.

Solicitations for contribution to MN Corn were not restricted to members of MCGA or its employees and families. MCGA solicited for MN Corn in *Corn Talk*, MCGA's tri-annual newsletter available to the public online and mailed to members, as well as in the monthly *Leader Updates* available only to members. Solicitations invite readers to attend the MN Corn Auction, an annual fundraiser,<sup>3</sup> and state only that the proceeds from the auction support "MN Corn, MCGA's political action committee," and do not indicate whether the funds raised would

<sup>2</sup> MN Corn's updated spending guidelines stated "Candidates for federal congressional office may receive up to \$3,000. Incumbent Presidential candidates will be allowed up to \$5,000. We will always follow state and federal guidelines and will not exceed the maximum allowable donation."

<sup>3</sup> The auction is held at the MN Ag Expo, MCGA's annual trade and education show, which is free to all Minnesota corn producers. A newsletter describing the 2007 Expo states "More than 700 Minnesota corn farmers, their friends and associates" attended the event. *MCGA Leader Update*, January 26, 2007.

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1 be used to support state or federal candidates. While the auction attracts farmers who are  
2 members of MCGA, it is open to the general public, and any one is eligible to bid on the auction  
3 items.

4 A majority of MN Corn's receipts were in-kind contributions from individual farmers  
5 which corresponded to the purchase price of donated items at the MN Corn Auction. MN Corn  
6 also accepted contributions from a Minnesota state PAC, Southern Minnesota Sugar  
7 Cooperative, which may have included prohibited funds because Minnesota law allows state  
8 PACs to accept contributions from labor organizations. MN Corn's receipts from 2000-2007  
9 totaled \$112,736.52, ranging from \$5,865.00 in 2007 to \$19,573.50 in 2006.

10 MN Corn made its first contribution to a federal candidate in 2000 and continued making  
11 federal contributions through 2007. The chart below sets forth the amount of all MN Corn  
12 disbursements to federal candidates from 2000-2007:<sup>4</sup>

| <b>Year</b> | <b>Federal<br/>disbursements</b> |
|-------------|----------------------------------|
| <b>2000</b> | <b>\$1,400</b>                   |
| <b>2001</b> | <b>\$950</b>                     |
| <b>2002</b> | <b>\$2,250</b>                   |
| <b>2003</b> | <b>\$4,000</b>                   |
| <b>2004</b> | <b>\$11,750</b>                  |

<sup>4</sup> MN Corn's disbursements to state candidates during that time period were as follows: 2000 - \$1,450; 2001 - \$0, 2002 - \$2,800; 2003 - \$4,500; 2004 - \$4,750; 2005 - \$4,705; 2006 - 9,975; 2007 - \$700.

**Factual and Legal Analysis****Minnesota Corn Growers Association;****Minnesota Corn Growers Association PAC and****Michael McCarvel, in his official capacity as treasurer;****MN Corn PAC and Michael McCarvel, in his****official capacity as treasurer**

|             |                 |
|-------------|-----------------|
| <b>2005</b> | <b>\$11,650</b> |
| <b>2006</b> | <b>\$32,500</b> |
| <b>2007</b> | <b>\$7,650</b>  |

**1 TOTAL: \$72,150****2 C. MN Corn's 2006 Contacts with the Reports Analysis Division ("RAD")**

**3 On October 16, 2006, RAD advised a representative of MN Corn that the state PAC was**  
**4 operating improperly. Kathy Smith, the former business and finance director of MCGA,**  
**5 administrator of MN Corn, and assistant treasurer of MCGA PAC, called RAD and inquired if**  
**6 MCGA's state PAC was allowed to donate money to federal candidates because it had been**  
**7 doing so for years.<sup>5</sup> RAD told Smith that all federal contributions must come from federally**  
**8 permissible funds and must be reported to the Commission. RAD also instructed Smith to ask**  
**9 for a refund of any impermissible contributions it may have made and gave her two options in**  
**10 order to correct the previous behavior and to contribute to federal candidates in the future: 1)**  
**11 transfer all funds from MCGA PAC's account into MN Corn's account and terminate the federal**  
**12 committee, and then file an FEC Form 1 with the Commission, registering the state PAC as a**  
**13 federal PAC with the Commission, as long as all funds in the account were raised through**  
**14 federally permissible sources or 2) file an FEC Form 99 (to disclose the name, date and amount**  
**15 of any federal contributions made from the state PAC) and stop giving to federal candidates from**  
**16 the nonfederal account.**

<sup>5</sup> According to information obtained by the Commission, Smith called RAD because in the fall of 2006, a federal candidate's committee raised questions as to whether MN Corn's contribution came from a federal or state PAC.

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1       Smith also asked RAD if proceeds from the annual auction would be federally  
2       permissible funds. RAD told Smith that if the item donations and money comes from members  
3       of the restricted class and absolutely no corporate money is being used, then she could deposit  
4       these funds into the federal account. RAD also told Smith how to properly report donated items  
5       for the auction as in-kind contributions. Finally, RAD advised Smith to take action as soon as  
6       possible. According to information obtained by the Commission, however, MN Corn did not  
7       take immediate action because October was a very busy time for its farmers because of the  
8       harvest, and therefore, correcting the situation was not a high priority at that time.<sup>6</sup>

9       According to information obtained by the Commission, after the January 2007 auction,  
10      MN Corn did not deposit proceeds into either PAC because it was still trying to decide how to  
11      proceed. In May 2007, MCGA's federal lobbyist recommended sending out more checks to  
12      federal candidates. Smith and Michael McCarvel, the federal PAC's treasurer, began discussing  
13      what to do, and McCarvel talked to other contacts he knew of who had federal PACs. In  
14      September 2007, the PAC Committee met with newly retained counsel, and were told to stop all  
15      PAC activity until further notice. MN Corn followed that directive. In early 2008, MCGA filed  
16      with the Commission its missing disclosure reports and amended its previously filed reports for

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<sup>6</sup> Information obtained by the Commission also discusses a 2004 incident that might have alerted MN Corn to problems prior to Smith's 2006 conversations with RAD. MN Corn made a contribution to the Republican National Committee on October 25, 2004. The Committee called and asked Smith if MN Corn was a federal PAC and when she said it was not, the Committee said it could not take MN Corn's check. According to information obtained by the Commission, Smith stated that she assumed "as a national committee they must be different from candidates as the candidates were cashing checks and there were no questions." Still, the incident "did raise a flag but our MN Campaign Finance Board still said we could give checks to federal candidates out of state PAC funds. We continued on and kept reporting to the state where all the checks were going."

the years 2000-2007. The reports include all federal activity from MN Corn and MCGA PAC during those years.

### **III. LEGAL ANALYSIS**

#### **A. MN Corn Failed to Register and Report as a Political Committee**

MN Corn has never registered or reported with the Commission as a political committee.

A "political committee" is any committee, club, association, or other group of persons that receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year, 2 U.S.C. § 431(4)(A), and whose major purpose is federal campaign activity (i.e., the nomination or election of a federal candidate). See Supplemental Explanation and Justification, Political Committee Status, 72 Fed. Reg. 5,595 5,597 (Feb. 7, 2007). The Act requires political committees to register and report with the Commission. 2 U.S.C. §§ 433(a) and 434(a).

MN Corn's contribution activity demonstrates that its major purpose from at least 2004 to 2007 was to support federal candidates. From 2004-2007, MN Corn's total contributions to federal candidates ranged from \$7,650 to \$32,500 per year, which surpassed its contributions to state candidates in each of those years by \$6,945 to \$22,525 per year. See chart and n.4 *supra*. MN Corn also exceeded the \$1,000 expenditure threshold required by the Act to qualify as a political committee each year from 2004-2007. Therefore, MN Corn was a political committee under the Act. As a result, MN Corn had a duty to register as a political committee with the Commission and disclose its receipts and disbursements through reports filed with the Commission, but it did neither. 2 U.S.C. §§ 433(a) and 434(a). Since MN Corn failed to register

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**Factual and Legal Analysis****Minnesota Corn Growers Association;****Minnesota Corn Growers Association PAC and****Michael McCarvel, in his official capacity as treasurer;****MN Corn PAC and Michael McCarvel, in his****official capacity as treasurer**

1 and report as a political committee with the Commission, the Commission finds reason to believe  
2 MN Corn violated 2 U.S.C. §§ 433 and 434.

3 **B. MN Corn's Improper Receipts**

4 MN Corn may have accepted contributions that were not federally compliant. The  
5 Commission's regulations require that contributions meet certain conditions for a political  
6 committee to deposit them into an account used for federal and non-federal elections. 11 C.F.R.  
7 § 102.5(a)(1)(ii). The contributions must be designated for a federal account, they must be  
8 contributions that result from a solicitation which expressly states that the contribution will be  
9 used in connection with a federal election or the contribution is from contributors who are  
10 informed that all contributions are subject to the prohibitions and limitations of the Act.  
11 11 C.F.R. § 102.5(a)(2). The Act further restricts committees from accepting contributions  
12 exceeding limits, and prohibited contributions, including those from labor organizations.  
13 2 U.S.C. § 441a(f), 441a(a)(1)(C) and 441b(a).

14 MN Corn used funds in connection with federal elections from 2000-2007, but did not  
15 indicate to any of its contributors that the funds would be used for federal elections. The  
16 solicitations for the annual MN Corn Auction, the PAC's primary fundraiser, only state that the  
17 fundraiser is for "MN Corn PAC, MCGA's political action committee," and do not specify that  
18 the auction proceeds would be used in connection with federal elections. Information obtained  
19 by the Commission confirmed that MN Corn did not follow the requirements set forth in  
20 11 C.F.R. § 102.5(a)(2).

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1 In addition, MN Corn may have accepted prohibited contributions. It accepted from  
2 Southern Minnesota Sugar Cooperative, a state PAC registered in Minnesota, \$2,000 in 2000,  
3 \$1,000 in 2002, \$1,500 in 2003, \$2,500 in 2004 and \$2,500 in 2005. The funds may not have  
4 been federally compliant because Minnesota law allows labor organizations to contribute to state  
5 PACs in amounts under \$100, which is prohibited by the Act.<sup>7</sup> Since it appears that MN Corn  
6 deposited funds into its account that did not follow the requirements in 11 C.F.R. § 102.5(a)(2),  
7 and may have deposited other contributions from prohibited sources, we recommend the  
8 Commission find reason to believe that MN Corn violated 11 C.F.R. § 102.5(a)(2) and 2 U.S.C.  
9 § 441b(a).

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13 **C. MN Corn Made Excessive Contributions**

14 MN Corn made several excessive contributions to federal candidates. In the 2005-2006  
15 election cycle, the Act prohibited political committees from making contributions to federal  
16 candidates and their political committees in excess of \$2,100. 2 U.S.C. §§ 441a(a)(1),  
17 441a(c)(1)(B),(C).<sup>8</sup> In 2005, MN Corn made a \$2,500 contribution to Senator Norm Coleman

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<sup>7</sup> Minnesota campaign finance law allows state PACs to accept contributions of \$100 or less from any source, except corporations. Minn. Stat. §§ 10A.20 (3), 211B.15 (1) and (2). If a contribution exceeds \$100, the organization making the contribution must register with the Minnesota Board and disclose its financial activity.

<sup>8</sup> MN Corn never qualified as a multicandidate committee under 11 C.F.R. § 100.5 (e), which requires that a political committee i) has been registered with the Commission for at least six months; ii) has received contributions for federal elections from more than fifty persons, and iii) has made contributions to five or more federal candidates, in order to have an increased contribution limit of \$5,000 to a candidate per year under the Act. Since MN Corn

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1 and a \$3,000 contribution to Congressman Mark Kennedy, each over the Act's limitations. In  
2 2006, MN Corn made a \$5,000 contribution to Senator Saxby Chambliss, a \$3,000 contribution  
3 to Congressman Gilbert Gutknecht and a \$3,000 contribution to Congressman Collin Peterson,  
4 all in excess of the Act's limitations. Since MN Corn made excessive contributions to federal  
5 candidates, the Commission finds reason to believe that MN Corn violated 2 U.S.C.  
6 § 441a(a)(1).

**D. MCGA PAC Failed to Disclose its Affiliation with MN Corn**

8 MCGA PAC registered with the Commission on November 22, 2005 as an SSF of  
9 MCGA but did not disclose its affiliation with MN Corn. The Act requires that when an SSF is  
10 established, it must file a statement of organization within 10 days after establishment and the  
11 statement of organization must include, among other things, the name, address, relationship and  
12 type of any connected organization or affiliated committee. 2 U.S.C. § 433(b)(2). An affiliated  
13 committee is a committee that is established, financed, maintained or controlled by the  
14 same...person or group of persons. 11 C.F.R. § 100.5(g)(2). When membership organizations,  
15 including trade or professional associations, establish, finance, maintain or control committees,  
16 the committees are affiliated. 11 C.F.R. § 100.5(g)(3)(iv). MCGA established, maintained and  
17 controlled both MN Corn and MCGA PAC, making MN Corn and MCGA PAC affiliated.  
18 MCGA PAC's statement of organization said it was connected to MCGA, but it did not reveal its  
19 affiliation with MN Corn. Since MCGA PAC failed to disclose its affiliation with MN Corn, the  
20 Commission finds reason to believe MCGA PAC violated 2 U.S.C. § 433(b)(2).

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never registered with the Commission and never received contributions designated for federal elections, the first and second requirements were not fulfilled. See discussion of 11 C.F.R. 102.5(a) violations *supra*.

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**Factual and Legal Analysis****Minnesota Corn Growers Association;****Minnesota Corn Growers Association PAC and****Michael McCarvel, in his official capacity as treasurer;****MN Corn PAC and Michael McCarvel, in his****official capacity as treasurer****E. MCGA Solicited Outside the Restricted Class**

The submission reveals that the MCGA solicited the general public for contributions.

The Act limits a membership trade association and a membership trade association's separate segregated fund's solicitations to the restricted class, namely the trade association's members, and executive or administrative personnel, and their families. 2 U.S.C § 441b(b)(4)(C) and (D). MCGA is a membership trade association with 6,011 members and eight employees, four of whom are executive or administrative personnel. There are no corporate members. MCGA advertised for its annual auction fundraiser outside of its restricted class through *Corn Talk*, a MCGA publication, which is featured publically on its web page in addition to being sent to its members. See AO 1978-17 (National Cable Television Association) (providing advance information concerning a particular fundraising activity constitutes a solicitation). MCGA further solicited the general public each year by holding the auction at the MN Ag Expo, which was open to all corn farmers, not just MCGA members. *Id.* (fundraising booth at convention in exhibition hall is a solicitation because it may fairly be considered as a request to person visiting the exhibit area to make a contribution to the PAC). In its submission, MCGA admits that it did not distinguish between the general public, its members and their families, or its employees and their families when it solicited for fundraising, in violation of 2 U.S.C § 441b(b)(4)(C) and (D).

The total amount of all itemized contributions from individuals reported to the Commission is \$41,450 from 2000-2007, primarily from auction receipts. MN Corn may have received some of these contributions from outside the restricted class, as a result of the general public solicitations. MCGA is unable to calculate exactly how many contributions from 2000-

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- 1 2007 were from outside the restricted class because only current membership lists are available.<sup>9</sup>
- 2 Thus, since MCGA solicited the general public and received an unknown amount of
- 3 contributions from outside the restricted class, the Commission finds reason to believe that
- 4 MCGA violated 2 U.S.C. § 441b(b)(4)(C) and (D).

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<sup>9</sup> MCGA compared the current membership list to the list of individual itemized contributions recently reported to the Commission for the years 2000-2007, and found that 41 out of 55 individual contributions were from current members. The remaining 14 contributions are not from current members and in the absence of past membership lists, MCGA could not determine whether the individuals were members at the time they contributed. MCGA also did not know for certain if all of the 41 current members were actually members when they contributed.